In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.4193 of 2005.

Date of decision:22.1.2007.

The State of Punjab and others.

...Petitioners.

Versus

Murari Lal

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.T.S.Chauhan, Additional Advocate General Haryana.

Mr.Arun Chawla Advocate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

Murari Lal respondent had filed a civil suit for a declaration against the petitioners claiming his entitlement to the pensionary benefits along with interest. The said suit was decreed by the learned trial Court vide judgment and decree dated 25.5.2004.

The petitioners filed an appeal along with an application for condonation of delay which was stated to be 210 days. The application was contested by the respondent.

Issues were framed by the learned Lower Appellate Court to find out if there were sufficient grounds for condonation of delay.

The learned Lower Appellate Court reached the conclusion

that there were no reasons for condonation of delay and accordingly the application for condonation of delay was dismissed by the learned Additional District Judge, Bathinda vide impugned order dated 3.6.2005. Since the appeal was barred by limitation, the appeal was also dismissed.

Hence, the present petition.

In the present case, delay has been explained by the petitioners to the extent that earlier an opinion was recorded by the District Attorney as also by the Director, Prosecution & Litigation that it was not a fit case for filing the appeal. However, later on, the Secretary, Department of Health took the decision that the appeal should be filed. The office procedures consumed time which is saved in the case of private parties. Therefore, in the circumstances of this case, delay has been properly explained.

The learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court reported as Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, AIR 1987 S.C.1353 in support of his submission that the condonation of delay has to be analyzed by the Court with liberal outlook. The following principles of law were laid down by the Hon'ble Supreme Court in this case:-

> **"It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized**

that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

It was further submitted that the Hon'ble Supreme Court

reiterated it in the judgment reported as The Special Tehsildar, Land Acquisition, Kerala, Vs.K.V.Ayisumma,_1996(2) Apex Court Journal 232 (S.C). It was held by the Hon'ble Supreme Court as under:-

> **"It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay. The transaction of the business of the Government being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skillful management of delay in the process of filing the appeal. The approach of the Court would be pragmatic but not pedantic.**

On the other hand, the learned counsel for the respondent has placed reliance on the judgment reported as P. K. Ramchandran Versus State of Kerala and another,_(1998-3) Punjab Law Reporter 605 in which the Hon'ble Supreme Court had taken a view to the contrary.

These submissions have been considered. In the present case, the respondent has claimed pensionary benefits after 10 years of service. This was contested by the petitioners under Rule 7.5 of the Punjab Civil Services, Volume I, Part I. Therefore, it would be in the interest of justice to get this controversy decided on merits so that the respondent does not get undeserved relief nor the deserved relief should be denied to him. In case his case had no merit, it will lay down a precedent and the undeserved persons would exploit the passing of this order by the Judicial Courts. Therefore, it would be in the interest of justice that this controversy should be decided on merits and not on technicalities.

Therefore, this petition is accepted and the impugned order dated 3.6.2005 is set aside.

However, the petitioners are burdened with costs of Rs.5,000/- for causing inconvenience to the respondent. The parties will appear in the learned Lower Appellate Court on 19.2.2007. The petitioners would make the payment of costs of Rs.5,000/- in the learned Lower Appellate Court for onward payment to the respondent and the said Court shall decide the appeal on merits.

Dasti on payment of usual charges.

January 22,2007. **(S. N. Aggarwal)**
Jaggi **Judge**